

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re: ) Chapter 7  
)  
JII LIQUIDATING, INC. f/k/a ) Case No. 05-25909  
JERNBERG INDUSTRIES, INC.; JSI ) (Jointly Administered)  
LIQUIDATING, INC. f/k/a JERNBERG )  
SALES, INC; and ) Bankruptcy Judge John H. Squires  
IM LIQUIDATING, LLC f/k/a IRON )  
MOUNTAIN INDUSTRIES, LLC, ) Hearing Date: December 10, 2009  
) Hearing Time: 9:30 a.m.  
Debtors. )

**NOTICE OF MOTION**

**To: See Attached Service List**

**PLEASE TAKE NOTICE** that on **Thursday, December 10, 2009**, at the hour of **9:30 a.m.**, the undersigned shall appear before the Honorable John H. Squires, United States Bankruptcy Judge (or any judge who may be sitting in his stead), Courtroom 680, 219 South Dearborn Street, Chicago, Illinois, and shall then and there present the **MOTION OF THE TRUSTEE FOR APPROVAL OF STIPULATION AND FINAL SETTLEMENT AGREEMENT WITH SENTRY INSURANCE, A MUTUAL COMPANY, RESOLVING CERTAIN DISPUTES RELATED TO VARIOUS CLAIMS IT HAS ASSERTED AGAINST THESE ESTATES**, a copy of which is attached hereto and served upon you, at which time you may appear as you see fit.

Dated: November 24, 2009

RICHARD J. MASON, Trustee of the  
Bankruptcy Estates of JII Liquidating Inc.  
f/k/a Jernberg Industries, Inc., f/k/a JSI  
Liquidating Inc., f/k/a Jernberg Sales, Inc.,  
IM Liquidating, LLC f/k/a Iron Mountain  
Industries LLC

By: /s/ Michael M. Schmahl  
One of His Attorneys

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that he caused the **Notice of Motion and MOTION OF THE TRUSTEE FOR APPROVAL OF STIPULATION AND FINAL SETTLEMENT AGREEMENT WITH SENTRY INSURANCE, A MUTUAL COMPANY, RESOLVING CERTAIN DISPUTES RELATED TO VARIOUS CLAIMS IT HAS ASSERTED AGAINST THESE ESTATES**, was duly served upon those parties on the attached Service List, by regular United States mail, postage pre-paid, this 24<sup>th</sup> day of November, 2009.

**/s/ Michael M. Schmahl**

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>In re:</b>	)	<b>Chapter 7</b>
	)	
<b>JII LIQUIDATING, INC. f/k/a JERNBERG</b>	)	<b>Case No. 05-25909</b>
<b>INDUSTRIES, INC.; JSI LIQUIDATING, INC.</b>	)	<b>(Jointly Administered)</b>
<b>f/k/a JERNBERG SALES, INC; and</b>	)	
<b>IM LIQUIDATING, LLC f/k/a IRON</b>	)	<b>Bankruptcy Judge John H.</b>
<b>MOUNTAIN INDUSTRIES, LLC,</b>	)	<b>Squires</b>
	)	
<b>Debtors.</b>	)	

**MOTION OF THE TRUSTEE FOR APPROVAL OF  
STIPULATION AND FINAL SETTLEMENT AGREEMENT WITH SENTRY  
INSURANCE, A MUTUAL COMPANY, RESOLVING CERTAIN DISPUTES RELATED  
TO VARIOUS CLAIMS IT HAS ASSERTED AGAINST THESE ESTATES**

Richard J. Mason, not individually but solely as the chapter 7 trustee (the “Trustee”) of the estates of JII Liquidating, Inc. f/k/a Jernberg Industries, Inc. (“Jernberg”), JSI Liquidating, Inc. f/k/a Jernberg Sales, Inc, and IM Liquidating, LLC f/k/a Iron Mountain Industries, LLC, (collectively, the “Debtors”), through his undersigned counsel, hereby moves (the “Motion”) the Court pursuant to 11 U.S.C. § 105 and Federal Rule of Bankruptcy Procedure 9019(a) for entry of an order approving a final compromise (the “Proposed Final Settlement”) with Sentry Insurance, a Mutual Company (“Sentry”), as contained in the Stipulation and Final Settlement Agreement attached hereto as Exhibit A, to resolve all of the remaining disputes between the Trustee and Sentry related to all of the claims Sentry has asserted against these estates (the “Sentry Claims”) and, in support thereof, respectfully states as follows:

**Jurisdiction and Venue**

1. This is a core matter pursuant to 28 U.S.C. § 157(b), and the Court has jurisdiction over this Motion under 28 U.S.C. §§157(b) and 1334.

2. Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

### **Background**

3. On June 29, 2005 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division.

4. On the Petition Date, the Debtors filed a motion [**Docket No. 27**] seeking approval of bidding procedures in connection with the proposed sale (the “Sale”) of substantially all of their assets to Hephaestus Holdings, Inc. (including all successors, “HHI”) for \$1,250,000 cash and the assumption of certain of the Debtors’ liabilities, pursuant to an Asset Purchase Agreement (as thereafter amended, the “APA”).

5. On August 24, 2005, the Court entered an order authorizing and approving the Sale to HHI (the “Sale Order”) [**Docket No. 421**].

6. On September 7, 2005 (the “Closing Date”), the Debtors and HHI closed the Sale. Effective as of the Closing Date, the Debtors ceased all operations and terminated all of their employees.

7. On October 10, 2005, these cases were converted to cases under chapter 7 of the Bankruptcy Code. Mason was appointed the trustee of these estates shortly thereafter.

### **Sentry’s Relationship With the Debtors and Sentry’s Claims**

8. Since before the Petition Date until the Closing Date, Sentry provided various insurance coverages to the Debtors pursuant to certain workers’ compensation (the “Workers’ Compensation Policy”), general liability (the “General Liability Policy”), and automotive insurance policies (the “Auto Policy”, and collectively and including the General Liability Policy and the Workers’ Compensation Policy, the “Insurance Policies”) owned by the Debtors.

9. On August 24, 2005, Sentry filed a Motion and Request for Payment of Administrative Expenses (the "Administrative Expense Motion") [**Docket No. 420**], in which Sentry is principally seeking payment of certain premiums based on the Insurance Policies on an administrative priority basis.

10. On August 31, 2005, Sentry filed a Motion for Relief from Stay as to Insurance (the "Stay Motion") [**Docket No. 435**], principally seeking to terminate the Insurance Policies due to the nonpayment of required premiums by the Debtors. The Stay Motion was rendered moot, because the Insurance Policies were terminated by agreement on the Closing Date, when the Debtors ceased all of their business operations.

11. Sentry also filed proofs of claim (collectively, the "Proof of Claim") [**Claim No. 21 in Case No. 05 B 25909; Claim No. 138 in Case No. 05 B 25910**] dated April 5, 2006, against the Debtors in the estimated amount of \$1,545,725 consisting of an estimated unsecured portion of \$373,466; an estimated secured portion of \$800,000; and an estimated priority portion of \$372,257. The Proof of Claim, among other things, significantly reduced the amount of Sentry's asserted administrative priority claims previously asserted in the Administrative Expense Motion and added additional alleged secured and unsecured pre-petition claims.

12. All of Sentry's claims in the Administrative Expense Motion and the Proof of Claim are based on the Insurance Policies. Sentry has certain continuing obligations under the Workers' Compensation Policy that have and will continue to result in additional claims against the Debtors based on certain retrospective premiums (the "Retrospective Premiums") required under the Workers Compensation Policy. Sentry has estimated these anticipated future Retrospective Premiums in the Proof of Claim by calculating portions of its claims using various risk factors and actuarial calculations. In other words, Sentry's claims are, in part, based on

actuarial projections and certain additional risk factors, arising from pre- and post-bankruptcy accidents that may not be fully liquidated for a number of years.

13. Therefore, portions of Sentry's claims are based upon, among other things, (a) incurred payments, fees, costs and expenses to date for all open policy years, and (b) projected Retrospective Premiums to be incurred during the run off of employee injury claims under the Workers Compensation Policy. As such, the actual amount of Sentry's claims change over time as the actual amounts of Retrospective Premiums become known following Sentry's payouts to or for the benefit of the beneficiaries of the Workers Compensation Policy.

14. Sentry also previously held \$829,585.19<sup>1</sup> (comprised of an \$800,000 security deposit that is accruing simple interest at a rate of 4.15% annually) (including all accrued interest, the "Security Deposit") of the Jernberg estate's money as security for the payment of premiums on the Insurance Policies, including the Retrospective Premiums, pursuant to a certain security agreement previously executed by the Debtors.

15. The Trustee informally objected to many of Sentry's asserted claims, and the parties conducted settlement negotiations and conducted informal discovery.

16. On July 27, 2006, the Court entered an Order [**Docket No. 771**] authorizing and approving an initial settlement between the Trustee and Sentry in accordance with the Stipulation and Initial Settlement Agreement between the parties (the "Initial Settlement").<sup>2</sup> The Initial Settlement, among other things:

- a) divided the Security Deposit between Sentry and the Trustee so that Jernberg's bankruptcy estate received \$100,000 of the Security

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<sup>1</sup> This amount includes interest accrued through June 30, 2006.

<sup>2</sup> A copy of the Initial Settlement is attached as Exhibit A to the Trustee's motion seeking approval of the Initial Settlement [**Docket No. 758**].

Deposit, and Sentry retained and was permitted to apply the balance, in the amount of approximately \$729,585.19, against its claims;

b) resolved various disputes regarding the appropriate manner for calculating the amount Sentry's asserted administrative priority claim and general unsecured claim (i.e. whether any specific Retrospective Premiums would be considered general unsecured claims or chapter 11 administrative claims);

c) resolved disputes related to certain pre-bankruptcy transfers by the Debtors to Sentry that the Trustee believed were avoidable pursuant to Section 547 of the Bankruptcy Code; and

d) capped the total potential amount of the Sentry's general unsecured claim at \$423,466.02 and the total potential amount of Sentry's chapter 11 administrative claim at \$372,257.

### **The Proposed Final Settlement**

17. Since the Court's approval of the Initial Settlement, the Trustee has reviewed numerous documents and reports regarding the component parts of Sentry's claims, especially including the actual and anticipated additional Retrospective Premiums incurred, and conducted extensive discussions with Sentry. Following arms length negotiations, Sentry and the Trustee have entered into, subject to Court approval, the Proposed Final Settlement, as contained in the Stipulation and Final Settlement attached hereto as Exhibit A, to resolve all of the remaining disputes related to the Administrative Expense Motion, the Proof of Claim, and any other disputes between the parties.

18. Generally, the terms of the Proposed Final Settlement are as follows:

(a) Sentry shall have an allowed pre-petition, general unsecured claim in the amount of \$423,466.02 (the “Allowed General Unsecured Claim”);

(b) Sentry shall have an allowed chapter 11 administrative expense claim in the amount of \$372,257.00 (the “Allowed Chapter 11 Administrative Claim”);

(c) Sentry shall receive distributions on account of the Allowed General Unsecured Claim and the Allowed Chapter 11 Administrative Claim from Jernberg’s bankruptcy estate pursuant to the priorities and procedures of the Bankruptcy Code;

(d) In the event that the Trustee seeks to substantively consolidate the Debtors’ bankruptcy estates into a single bankruptcy estate, Sentry will not object to such substantive consolidation of the Debtors’ bankruptcy estates;

(e) Sentry will not file any motions or pleadings or take any other action in or before the Court seeking payment on account of the Allowed Chapter 11 Administrative Claim through and including December 31, 2009;

(f) Sentry will waive, release, and forever discharge any and all claims, known or unknown, against the Trustee, the Debtors, or these estates, except that Sentry retains its rights to obtain distributions from Jernberg’s bankruptcy estate on account of the Allowed General Unsecured Claim and the Allowed Chapter 11 Claim;

(g) the Trustee and these estates will waive, release, and forever discharge all known claims against Sentry , including all claims under section 547 of the Bankruptcy Code; and

(h) the Court retains jurisdiction to interpret, construe, and enforce the Proposed Initial Settlement.



**Proposed Final Settlement Is In the Best Interests of the Estate and Should Be Approved**

19. Based on the Trustee's investigation and analysis of the Administrative Expense Motion, the Proof of Claim, and the likely costs and risks involved with further litigation<sup>3</sup>, the Trustee believes that the Proposed Final Settlement is fair and equitable and in the best interests of these bankruptcy estates as required by the Seventh Circuit Court of Appeals in Depositor v. Mary M. Holloway Foundation, 36 F.3d 582, 586 (7<sup>th</sup> Cir. 1994). Further, the Trustee believes the provisions of the Proposed Final Settlement fall well "within the range of litigation possibilities," as required by our Circuit Court's decision in In Re Energy Co-op, Inc., 886 F.2d 921, 929 (7<sup>th</sup> Cir. 1989). A proposed settlement falls outside that range "only if it falls below the lowest point in the range of reasonableness." In re Telesphere Communications Inc., 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994), quoting In re Energy Co-op, Inc., 886 F.2d 921, 929 (7<sup>th</sup> Cir. 1989) (internal quotation marks omitted); and see, In re Drexel Burnham Lambert Group, Inc., 134 B.R. 493, 496-97 (Bankr. S.D.N.Y. 1991) (same principle).

20. The Proposed Final Settlement is in the best interests of these estates, because Sentry has provided documents and other evidence to the Trustee that the amount of the Retrospective Premiums already incurred exceed the amounts of the Allowed General Unsecured Claim and the Allowed Chapter 11 Administrative Claim.

**Notice**

21. The Trustee has provided notice of this Motion to (i) the thirty largest creditors of the Debtors, (ii) the United States Trustee, and (iii) those parties who have requested receipt of pleadings in these cases pursuant to Federal Rule of Bankruptcy Procedure 2002. Since the

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<sup>3</sup> The Trustee anticipates that further litigation of these disputes would likely involve voluminous documentary evidence and expert testimony, including *inter alia* actuarial testimony.

foregoing parties have been the most active in these cases, the Trustee requests that the Court determine that such notice is adequate and appropriate under the circumstances.

22. Additionally, the Trustee requests that the Court shorten notice so that this Motion may be heard at the hearing scheduled in these cases on the December 10, 2009, at 9:30 A.M. on sixteen days notice rather than the 20-day notice generally required under Federal Rule of Bankruptcy Procedure 2002 in order to save the estate for incurring additional expenses. The Trustee believes that there is ample cause to shorten notice pursuant to Federal Rules of Bankruptcy Procedure 9006(c)(1) (generally authorizing the Court to reduce the time required or allotted to perform various acts) and 2002(a)(3) (authorizing the Court to generally limit notice). For these reasons, the Trustee requests that the Court approve the limited notice described in this Motion.

(Remainder of the page intentionally left blank.)

WHEREFORE, the Trustee respectfully requests the Court enter an Order (i) approving the Stipulation and Final Settlement Agreement; (ii) retaining jurisdiction in this Court to interpret, construe, and enforce the Stipulation and Initial Settlement Agreement; (iii) approving

the limited notice described in this Motion; and (iv) granting such additional relief as the Court determines is just and appropriate.

Dated: November 24, 2009

Richard J. Mason, Trustee

By: /s/ Michael M. Schmahl  
One of His Attorneys

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